REMARKS

This reply is submitted in response to the Office Action dated October 17, 2006. The amendments above and the remarks that follow address the points raised in the Office Action and, thereby are believed to place this application in condition for allowance.

Interview

Applicants thank the Examiner for the courtesy of a telephonic interview on January 9, 2007 with the Applicants' representative. During the interview, the rejections of certain claims based on 35 U.S.C. §101 were discussed. Applicants' representative noted that the term "process," as used in the claims, has a well-known meaning in the art. In particular, it refers to "a task or group of tasks to be performed by a computer." Encyclopedia of Computer Science, Third Edition, 1993. Although no agreement was reached, Applicants' representative indicated he would consider claim amendments to more clearly define the claimed invention. Such amendments are introduced with this response, as indicated above, which are believed to overcome the §101 rejections.

Claim Rejections under 35 U.S.C. §101

Claims 1, 3-10, and 12-19 stand rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. The Examiner states that the claims are directed to both an apparatus and method due to the recitation of the "first process" and "second process" in the claims.

Claim 1, as amended, recites a communications device for detecting user transmitted symbols encoded in spread spectrum waveforms ("user waveforms"). The device includes a first operating system supporting execution of a first process corresponding to a first set of communication tasks for detecting user transmitted symbols encoded in the user waveforms. The device further includes a second operating system supporting execution of a second process corresponding to a second set of communication tasks for detecting user transmitted symbols encoded in the user waveforms. The first and second operating systems differ. The device also includes a protocol translator coupled to the first and second processes and translating communications between them. The first process sends to the second process, via the protocol

translator, a set of executable instructions for performing at least a portion of the second set of communication tasks. The second process generates a matrix as a result of executing the set of instructions.

As noted above, the term "process," is known in the art as referring to task or group of tasks to be performed by a computer. The use of the term "process" in claim 1 is in conformity with this common understanding of that term. In particular, claim 1 recites that the first process corresponds to a first set of communications *tasks* for detecting user transmitted symbols encoded in user waveforms, and the second process corresponds to a second set of communication *tasks* for detecting user transmitted symbols encoded in the user waveforms. In addition, claim 1 recites that the execution of each process is supported by a respective operating system. In other words, the first and second processes are not recited in isolation, but are rather recited in connection with the respective operating systems.

Such apparatus claims are considered as statutory subject matter. Specifically, the MPEP 2106(IV)(B) states:

> The question of whether a claim encompasses statutory subject matter should not focus on which of the four categories of subject matter a claim is directed to -- process, machine, manufacture, or composition of matter -- [provided the subject matter falls into at least one category of statutory subject matter] but rather on the essential characteristics of the subject matter, in particular, its practical utility.

> For example, a claimed invention may be a combination of devices that appear to be directed to a machine and one or more steps of the functions performed by the machine. Such instances of mixed attributes, although potentially confusing as to which category of patentable subject matter the claim belongs, does not affect the analysis to be performed by USPTO personnel. Note that an apparatus claim with process steps is not classified as a "hybrid" claim; instead, it is simply an apparatus claim including functional limitations. See, e.g., *R.A.C.C. Indus. v. Stun-Tech, Inc.*, 178 F.3d 1309 (Fed. Cir. 1998) (unpublished).

Claim 1 comports with the above guideline as it defines devices, such as the operating systems, and functions to be performed by the devices, such as the execution of first and second processes.

Accordingly, claim 1 is not a mixed process-apparatus claim. Rather, it recites an apparatus that includes specific elements (operating systems, protocol translator) that support execution of a set of communications tasks. As such, claim 1, and claim 3-9 which depend therefrom, recites statutory subject matter.

The arguments above apply with equal force to establish that independent claim 10, and claims 12-16 which depend therefrom, also recite statutory subject matter.

Claim Rejections under 35 U.S.C. §112

Claims 1, 3-10, and 12-19 stand rejected under 35 U.S.C. §112, second paragraph, for being indefinite regarding the "first process" and "second process" recited in the claims. As noted above, claims 1 and 10 are amended to overcome this rejection.

Claim Rejections under 35 U.S.C. §103

Claim 17 stands rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,430,503 of McBurney et al. in view of U.S. Publication No. 2002/0031166 of Subramanian et al. Without acquiescing to the Examiner's rejections, in order to expedite the prosecution of the present application, claim 17, and claims 18 and 19 which depend therefrom, are canceled without prejudice, thus obviating the basis for this rejection.

Conclusion

In view of the above amendments and remarks, Applicants respectfully submit that the claimed invention is in condition for allowance. Applicants therefore kindly request reconsideration and allowance of the pending application.

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Respectfully submitted,

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